

Disposing of surplus property - clearing out the legal attic

The land and buildings that a charity owns are likely at some stage to no longer be fit for the purposes for which they were originally acquired. They may be too big, too small, in the wrong place, in a poor state of repair or no longer compliant with the rules derived from statute and best practice that may require a particular type of layout or facilities. In the case of voluntary sector properties, it may not simply be a matter of obtaining a valuation of the property and putting it on the market. There may be a number of legal issues which can usefully be addressed to enhance the value or marketability of the property, or indeed be essential to its profitable disposal.

Legal information can be found from a number of sources, and it is best to review the whole position before embarking on a disposal strategy.

Mary Cheves, partner in the charity and social business team and Mike Greensmith of Stanley Hicks Surveyors will be talking at our seminar on 10 November 2015 on how to maximise your returns from surplus or redundant property assets. Please [click here](#) for full details.

The Land Register

Most properties are registered at the Land Registry, which holds details of many of the legal interests that affect the ability to dispose of and potentially reduce the value of property.

Mortgages are an example of this. Mortgages may secure commercial loans, which would have to be repaid if the property were sold. In the case of voluntary organisations, there may also be mortgages securing the repayment provisions of grant funding agreements. The voluntary organisation may have to repay all or part of the original grant funding if the property is sold.

There is a tendency to overlook the existence of these 'clawback' mortgages as they are in large part passive, and do not for example, require periodic repayments such as is the case under commercial mortgages.

It should be possible to obtain copies of the mortgage documents from the Land Registry. The mortgage may refer to a separate agreement of which the Land Registry may not have a copy. It may therefore be necessary to find further details from the grant funders themselves with regard to the grant conditions, and in particular, repayment provisions.

There may be other mechanisms relating to grant funding or acquisitions at an undervalue. For example, there may be buy-back options or pre-emption rights (of first refusal) in favour of the grant funder (often at a nominal sum) if the property is sold. This may render the property virtually valueless, unless a negotiated position is reached with the grant funder.

It is common for freehold property held by voluntary organisations to be subject to very stringent 'restrictive covenants' (agreed restrictions enforceable by the owners of neighbouring properties) that sometimes limit the use of the property solely for a particular purpose of the organisation (for example as a residential home).

These restrictions can sometimes be relaxed by negotiation with the owners of neighbouring properties. The negotiations would be conducted against the background of the right under section 84 of the Law of Property Act 1925 for a party whose land is subject to restrictive covenants to apply to the court to have them waived or discharged. Restrictive covenants may sometimes alternatively, or in part, be dealt with in whole or in part by title insurance. All of this can take some planning and time.

In other cases, a grant funder may simply have a Land Registry restriction on the Proprietorship Register in the Land Register. This will prevent the sale of the property without the consent of the funder, but often won't indicate what conditions must be satisfied in order for the funder to give consent. It may again be necessary to make direct enquiries of the funder with respect to the grant conditions, possibly at the same time discussing their potential waiver or discharge or application to a replacement property.

Longer leases of voluntary sector properties can be particularly restrictive with respect to the use of the property, and to whom and in what circumstances the property may be transferred to another party. If the original lease has been lost, it should be possible to obtain a copy from the Land Registry (although many of this type of document have been lost).

It is therefore essential to understand all the relevant provisions of the lease.

Negotiations with the landlord with a view to waiver or variation of lease restrictions may be fruitful, but again are likely to take time.

LLC1 (Local Authority) search

Local authorities hold a register of certain land interests (a Local Land Charges Register) that are not held at the Land Registry.

A number of grants made by the former Greater London Council (GLC) are secured by what are effectively mortgage arrangements pursuant to the Greater London Council (General Powers) Act 1974.

Since abolition of the GLC, many of these grant provisions are now vested in local authorities, and are still current, and may require repayment to the local authority.

There may be some potential for persuading the local authority that all or some of the repayment should be waived, especially as local authorities are in some cases not required to repay some of the funding sources from government.

Other obligations both within and outside London may arise under section 33 of the Local Government (Miscellaneous Provisions) Act 1982. A wide range of positive or negative obligations could be evident from such agreements.

The Local Land Charges Register also shows planning permissions, which could be 'personal' (i.e. limited to use by the current owner) or include other limitations, for example a very restricted use or restricted hours of use.

More recent planning permissions including conditions should be indicated on the Land Charges Register, and where there does not appear to be an up to date permission authorising current use of the property, further investigations may be carried out with the Local Land Charges Department or the Local Planning Authority in order to obtain copies of any planning permissions that appear to be relevant.

Also very common in the voluntary sector are section 106 (planning gain) agreements that govern the use of the property.

In many cases, the property will have been obtained through an agreement with a developer to re-provide community or social care facilities, and there may effectively be a restriction on the property to that use.

Simply obtaining a change of authorised planning use in this case will not be sufficient for a buyer who wishes to use the property for other purposes and therefore the section 106 agreement could impact on the sale and marketability of the property. There are potential review procedures on application to the Local Planning Authority, but these may take some time.

Your own records

Not all grant agreements requiring repayment on disposal of property are secured by mortgages.

You should therefore consider whether in the past there have been capital funding agreements relating to the property either with respect to grants for refurbishment or original transfer of the property or grant of a property lease at an undervalue whether or not these appear on the Land Register or the Local Land Charges Register. This is especially common with older grants: the taking of mortgages as best practice to secure grant repayment provisions is a more recent development.

You should also look for evidence of whether the property is subject to 'special trusts' which limit its use, or is 'permanent endowment', which means that the proceeds of the sale may have to be retained as capital. If circumstances are such that neither of these restrictions is appropriate, either mechanisms under the Charities Act 2011 or an approach to the Charity Commission for a scheme or order may be of assistance.

Again, however, this can take time. Evidence of special trusts can sometimes be found on the Charity Commission website (where the property appears to be held as an asset of a 'linked' charity), in the accounts of the charity (in connection with a restricted fund) or in documentation held with old title deeds packets (now partly redundant in the case of registered land, but useful for non-Land Registry documents such as Charity Commission schemes), or potentially evidenced by original conveyance documents with the deeds or obtained from the Land Registry, indicating that the property was originally acquired subject to restricted trusts.

The property itself

You should consider whether there are clear boundaries around the property, and whether these actually correspond with Land Registry plans.

In some cases, there may be evidence of encroachment by another party, or long use by either owners of neighbouring property or the general public for access through the property to other properties or to the highway.

There are strategies to deal with these issues, but they often take time to negotiate and implement.

Legal advice

It is certainly worthwhile addressing these issues as soon as the question of disposal of the property arises. You can then obtain advice from your solicitor (and where relevant, surveyor) of what could be done to improve the marketability and value of the property, with sufficient time to consider the relative cost of options put to you and to consider and carry out such actions as you may consider necessary.

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